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BEFORE THE
UNITED STATES DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

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COMPUTER RESERVATIONS SYSTEM (CRS) REGULATIONS, NOTICE NO. 97-9	)	Docket No. OST-97-2881 -47

COMMENTS OF QANTAS AIRWAYS, LTD.

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COMMENTS OF QANTAS AIRWAYS, LTD.

Qantas Airways, Ltd. ("Qantas") submits these comments to the United States Department of Transportation ("DOT" or the "Department") in connection with DOT's general reevaluation of its Computer Reservations System ("CRS") Rules, 14 C.F.R. Part 255, as captioned above.[1]

I. QANTAS' INTEREST IN THIS PROCEEDING

Qantas, like other foreign air carriers,[2] has a strong interest in the outcome in this proceeding. The DOT's CRS Rules are a key influence on CRS codes throughout the world,

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[1]Qantas is a member of the Association of Asia Pacific Airlines ("AAPA"), formerly the Orient Airline Association, which submitted comments in this proceeding on December 8, 1997. The AAPA Comments represent the common views of the AAPA membership as a whole. Qantas' separate Comments are consistent with those of the AAPA but emphasize the issues of particular concern to Qantas.

[2]Qantas is based in Sydney, Australia. It maintains extensive domestic operations within Australia and international operations to and from the United States, Europe, Asia, and Africa.

including the European Commission's Code of Conduct for CRSs, the Australian Code of Conduct for CRSs, and the ICAO CRS Code. While the DOT CRS Rules are limited to sales within the United States, they set expectations as to what is reasonable and appropriate for CRS operations throughout the world. Of Qantas' total CRS distribution charges, moreover, 80% percent are paid to U.S.-based CRSs (Sabre and Galileo), whose Participating Carrier Agreements are construed under U.S. federal and state law. U.S.-originated bookings alone account for approximately 10% of Qantas' annual CRS costs. Such bookings are directly within the scope of DOT's CRS Rules.

Like other participating carriers, Qantas has seen its CRS distribution costs increase rapidly in recent years. Escalating booking fees and charges for non-productive bookings are undermining the substantial efforts Qantas has made to control its distribution costs. Yet Qantas has little or no ability to negotiate more equitable terms of CRS participation. As a matter of marketing necessity, it has no choice but to participate in every major CRS, on terms that are essentially dictated by each CRS. Qantas enjoys virtually no bargaining leverage over any of the major CRSs, for the consequence of non-participation (or even substantially reduced participation) in these systems--the loss of effective access to their subscribers--is simply too severe.

In Qantas' view, DOT's CRS Rules have been instrumental in controlling the most blatant abuses of the CRS' market power over their participating carriers. Additional modifications are necessary, however, to further temper the vast disparity in the relative market positions of CRSs and participating carriers. The proposals recommended herein are designed to promote competition in the CRS/participating carrier marketplace and to help equalize the relative bargaining power between CRSs and participating carriers.

II. QANTAS' CRS DISTRIBUTION EXPERIENCE

Of Qantas' total ticket sales, nearly one-half (46%) are generated through distribution channels outside of Australia. The vast majority of these overseas sales are effected through CRSs. Of the 54% of total ticket sales generated through distribution channels within Australia, a somewhat lower but still very substantial proportion is effected through CRSs. Qantas has found that indirect distribution channels such as CRSs have significantly higher costs than direct channels, and that the largest component of Qantas' indirect distribution costs consists of CRS costs (currently amounting to more than $50 million per year).

Like other airlines, Qantas is striving to control all of its costs, including its distribution costs. To Qantas, this has meant trying to increase the proportion of lower-cost direct sales and to decrease the proportion of higher cost sales through CRSs. Because there is still no effective substitute for CRS access to most travel agents, however, Qantas recognizes that for the foreseeable future it will be unable to significantly decrease the proportion of its total sales that are made through CRSs. Qantas is thus faced with the need to control its substantial CRS costs if its overall cost control efforts are to be successful.

To date, Qantas' CRS costs have remained effectively unconstrained. They are continuing to increase significantly each year. In the three years in which Qantas has been a private company, both its CRS distribution costs and its average CRS cost per net segment booking have increased steadily,[3] notwithstanding the price decreases that are common in other segments of the information processing industry.

Due in large part to the current DOT rule requiring CRSs to provide BIDT to participating carriers, 14 C.F.R. § 255.6(d), Qantas began to audit its CRS invoices in 1995. The initial audits confirmed Qantas' concern that CRSs were charging it substantial amounts for wholly non-productive "bookings." In 1996, Qantas estimated that it had overpaid CRS fees by about 10% (approximately $5 million per year), which inevitably affected the fares paid by passengers. Based upon continuing audits, the largest single category of overcharges consists of passive bookings (particularly by non-IATA travel agents),[4] followed by duplicative bookings, bookings which relate to flights or city pairs not operated by Qantas, and speculative bookings (including bookings in fictitious names, such as "Mickey Mouse").

Qantas' attempts to resolve the disputed booking fees with the CRSs on a bilateral basis have met with little success. They have typically refused to credit more than a very small portion of Qantas' claims, even after extensive negotiation. Qantas' avenues of recourse are limited and generally futile. Attempts to reclaim disputed amounts through airline clearinghouse procedures have proven ineffective because the CRSs have simply reversed the disputed amounts and billed Qantas again. Recourse to the courts is also impractical for Qantas. If Qantas were to take legal action against Galileo, for instance, the Participating Carrier Agreement ("PCA")

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[3]Indeed, Sabre recently announced a booking fee increase of 6 to 8% in 1998. Sabre 1998 Pricing Announcement.

[4]Sabre itself acknowledges that the introduction of a non-billable passive code for unticketed travel segments (if it were actually used by travel agents) could save Qantas approximately 4 to 6% in booking fees per year. See 1998 Pricing Announcement.

states that any such action must be brought in Cook County, Illinois. Galileo International Global Airline Distribution Agreement, Article 21. Even if a suit were brought, the PCAs, which were drafted by the CRSs, provide few if any contractual protections for participating carriers. A CRS' ultimate weapon, moreover, is its threat to expel a participating carrier from its system. Most participating carriers are effectively compelled to drop or compromise their claims in the face of such threats, for no international carrier such as Qantas can afford not to participate in any major CRS.

III. PROMOTING A COMPETITIVE CRS ENVIRONMENT

A. The CRS/Participating Carrier Market Structure is Noncompetitive

As DOT has recognized, travel agents typically subscribe to only one CRS. See, e.g., 62 Federal Register 59784 (Nov. 5, 1997). Competition among the major CRSs to attract and retain travel agent subscribers, therefore, is often intense. Travel agents' exclusive use of a single CRS, however, has quite the opposite impact on CRS competition for participating carriers. With very few exceptions, each participating carrier is effectively required to participate in each major CRS: only by participating in a particular CRS can an airline meaningfully reach the customers of the travel agencies that subscribe to the CRS. As a practical matter, therefore, each CRS enjoys effective monopoly power over access to its subscribers. See, e.g., id. at 59789. Given the vigorous competition in the CRS/travel agent market, and the utter lack of competition in the CRS/participating carrier market, it is hardly surprising that (according to the U.S. Department of Justice) only 10% of total CRS revenue is obtained from travel agents while 80% is obtained from participating carriers (with the remainder from hotels, car rental companies, and other travel service providers). See U.S. Justice Department Comments in DOT Docket 49812, at 2, 5.

Participating carriers do not have the realistic ability, like buyers in nearly all other industries, to reduce or terminate their purchases from any one major CRS. They simply cannot afford to be cut off from a sizeable number of retail outlets, and consequently carriers have little or no negotiating leverage vis-a-vis the major CRSs. The newly-adopted rule prohibiting enforcement of parity clauses in PCAs against non-vendor/non-marketer carriers, 14 C.F.R. § 255.6(e), gives most participating carriers the legal right to select the most appropriate participation levels and enhancements for them in each CRS. As long as a particular CRS provides the only effective means of accessing its subscribers, however, market forces will continue to inhibit participating carriers' exercise of this new right. Participating carriers must ensure that travel agents have ready access to their inventory through CRSs, even if that means acquiescing to higher and more expensive participation levels or to more sophisticated enhancements than the carrier would otherwise desire, because substitute channels remain unavailable.

B. Recommendations for Creating a More Competitive CRS Environment

Qantas agrees with DOT that a market-oriented solution that can bring competitive discipline to the participating carrier side of the CRS market is preferable to a purely regulatory approach. The CRS/participating carrier business cannot become truly competitive, however, as long as travel agents are effectively locked into the exclusive use of a single CRS. Participating carriers will continue to participate in each major CRS in order to access its subscribers, and they will consequently continue to have minimal bargaining power.

Qantas suggests, therefore, that one critical objective of the Department's adoption of new CRS Rules should be the elimination of the incentives and disincentives that lock travel agents into a particular CRS and discourage agents' use of alternative means of communicating with participating carriers. This is essentially the same goal DOT attempted to achieve when it adopted the current CRS Rules in 1992. Qantas submits that DOT was clearly on the right track then, but simply did not go far enough. We believe that the suggestions described below would help to further DOT's original (and continuing) desire to promote effective competition on the CRS/participating carrier side of the CRS market without harming competition on the CRS/travel agent side.

1. Prohibit Productivity Pricing Provisions in Subscriber Contracts

The current CRS Rules prohibit "minimum use" clauses in the standard contracts between CRSs and their travel agent subscribers ("Subscriber Contracts"). 14 C.F.R. § 255.8(b). These clauses, which were widely used before 1992, required CRS subscribers to use the vendor's CRS for a certain number or percentage of transactions each month, under penalty of severe financial consequences and/or forfeiture of the equipment. In adopting the current rules in 1992, however, DOT decided against prohibiting so-called "productivity pricing" provisions in Subscriber Contracts, notwithstanding the recommendations of some commenters to forbid them. 57 Federal Register 43780, 43826-27 (Sept. 22, 1992). It is now time for DOT to revisit its 1992 decision, and to prohibit further enforcement of productivity pricing provisions.

Productivity pricing clauses serve essentially the same purpose as minimum use clauses, but with financial incentives, rather than disincentives. They encourage travel agents to maximize their monthly bookings on their principal CRS by enabling them to reduce their monthly CRS costs (or even to receive cash or credit back from the CRS) depending on the amount by which they meet or exceed their monthly booking quotas. As a matter of practice, agents may receive productivity credits not only for making bona fide reservations, but also for making passive bookings, duplicate bookings, speculative bookings, and other types of non-productive transactions. The latter types of transactions provide no value to the participating carrier while resulting in increased CRS distribution costs.[5] Obviously not all travel agencies engage in abusive booking practices in order to reach their productivity goals. The reality, however, is that they not only have an incentive to do so, but their Subscriber Contracts specifically permit them to use, e.g., passive bookings in order to perform such back office functions as invoicing and recordkeeping which are for the agents' own benefit and for which participating carriers should not have to pay.

Qantas, like many other carriers, is conducting a travel agent education campaign to educate travel agents as to the consequences of non-productive bookings. As long as travel agents continue to receive productivity credits for such bookings, however, they will have a

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[5]The various products that CRSs have developed in recent years purportedly to help participating carriers control their CRS costs have limited utility. Some CRSs have developed products to block travel agents from making reservations on flights with flight numbers or on routes that are not operated by the participating carrier. But these enhancements may be circumvented with a few keystrokes, and they do not even attempt to address more significant types of abusive bookings. Most of the major CRSs also offer products that allow participating carriers to contemporaneously identify passive bookings. These products, when coupled with additional products available from third party suppliers, at least enable participating carriers to query travel agent subscribers before questionable transactions are billed. Participating carriers have no ability to prevent travel agents from actually entering unacceptable bookings, however, and, at least in transaction-based CRSs, carriers are charged a separate fee even if a queried transaction is cancelled. Attempts to seek financial recompense from the agents, moreover, are expensive, ineffective, and virtually impossible with regard to non-ARC or non-IATA subscribers.

strong incentive to make them; and as long CRSs continue to receive booking fees for non-productive transactions, they will have an incentive to permit them.[6]

The harm caused by productivity pricing provisions goes well beyond the encouragement of non-productive bookings. Like many of the other former terms and provisions in CRS Subscriber Contracts that are now prohibited by the current CRS Rules, productivity pricing provisions have a strong tendency to lock travel agents into the use of a single CRS and to inhibit travel agent use of alternative channels, including other CRSs and direct links to carriers. Even if other CRSs or alternative channels were available, travel agents would necessarily be reluctant to use them because they would not receive additional productivity credits from their principal CRS and would therefore pay more to (or receive less from) their CRS vendor each month.

If productivity pricing provisions were barred, travel agents would have no incentive to inflate their non-productive transactions each month. At least as significantly, they would have no economic incentive to favor their principal CRS over other CRSs or over direct links with carriers which by-pass CRSs altogether. Barring such provisions would reduce or eliminate discrimination against alternative channels and provide participating carriers a more level playing field. As DOT has long recognized, the development and use of multiple or alternative channels of communication between travel agents and participating carriers represents probably the most

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[6]Every major CRS has now adopted credit policies which describe the type of transactions for which they will or will not give credit to participating carriers. In general, these policies limit the provisions of credits to so-called "exceptions," bookings with incorrect flight numbers, city pairs, etc. For virtually all other types of transactions, participating carries are advised to direct their claims to the subscriber. These credit policies, moreover, are unilaterally adopted by the CRSs, are not incorporated into the PCAs, and can be changed or withdrawn at any time.

realistic hope for bringing competitive discipline to the CRS/participating carrier market. See, e.g., 57 Federal Register 43780, 43781 (Sept. 22, 1992). To that end, Qantas strongly encourages the Department to adopt a rule prohibiting the enforcement of productivity pricing provisions in Subscriber Contracts.

2. Eliminate the Exception in the Third Party Hardware/Software/ Database Rule for Leased Equipment

The current CRS Rules -- specifically 14 C.F.R. § 255.9 -- guarantee travel agents the right to use third party hardware and software, and to access other CRSs and third party databases in connection with agent-owned equipment. As explained by DOT in 1992, this rule was intended in large part to enable travel agents to access more than one CRS from the same terminal and to allow direct computer links between travel agents and carriers. 57 Federal Register 43780, 43796-97 (Sept. 22, 1992).[7] By enabling travel agents to use multiple CRSs or alternative channels to obtain information, make reservations, and issue tickets on a participating carrier's flights, it was hoped that the participating carrier's need to participate in the subscriber's principal CRS (at least at the highest levels with the maximum enhancements) would be diminished, and that some competitive discipline would be injected into the marketplace. See id.

Qantas again believes that DOT was squarely on the right track in adopting the third party hardware, software, and database rule in 1992. Unfortunately, the real world impact of this rule has been negligible, for it does not generally apply to CRS-owned equipment leased to

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[7]It is Qantas' understanding that the so-called "neutral switch," which would enable travel agents to switch from one CRS display to another on the same computer terminal, remains a technologically viable option.

travel agents, and CRSs have offered financial incentives to travel agents to ensure that they will choose leased equipment over agent-owned equipment. Qantas therefore strongly recommends that the coverage of this rule be extended to leased equipment as well as agent-owned equipment.[8] We agree with DOT that the third party hardware, software, and database rule could dramatically enhance competition on the CRS/participating carrier side of the CRS market, but only if the large loophole for leased equipment is closed.

3. Encourage the Development of the Internet and Intranet as Alternative Channels Rather than Extensions of the Major CRSs

The Internet and Intranet clearly have the potential of increasing competition in the CRS business by providing alternative channels of communication with travel agents and consumers -- a potential that is heightened by the increased use of electronic ticketing. To date, however, this potential has been virtually unrealized. In fact, the impact of Internet and Intranet services has actually had an adverse effect on competition: the CRSs' relative power in the distribution of air transportation via Internet and Intranet services has been growing, while efforts by non-vendor carriers to use these channels to by-pass CRSs have generally been unsuccessful.

a. CRS-Owned and Third Party Web Sites

Leveraging their power in the "traditional" CRS market, CRSs have been able to establish an increasingly significant Internet and Intranet presence simply by requiring their participating carriers to participate in their Internet and Intranet offerings. The Participating Carrier Agreements of all of the major CRSs purport to extend participating carriers' payment obligation to bookings made by any "subscriber," and the term "subscriber" (or its equivalent)

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[8]Alternatively, the rule could require CRSs to "unbundle" hardware and software and prohibit them from offering incentives for the leasing of equipment.

is typically defined in a way that encompasses not only travel agent subscribers, but also individual and corporate users of the CRS's own Internet and Intranet products. See, e.g., SABRE Participating Carrier Distribution and Services Agreement, Schedule 1, Sec. I-DD. Thus, participating carriers are contractually compelled to participate in a CRS's Internet and Intranet services, such as Sabre's Travelocity, whether they want to or not.

Third party Internet and Intranet offerings in the sale of air transportation should theoretically enable participating carriers to by-pass the major CRSs, thereby injecting new competition in the travel distribution market generally. In fact, however, third party offerings have not had a procompetitive impact because the third parties invariably use one or more of the major airline-owned CRSs as booking engines. Virtually all third party web sites offering multi-carrier displays simply provide user-friendly interfaces that access one or more of the major airline-owned CRSs. Again, participating carriers have no choice but to participate in these third party products and to pay the CRS that is used as a booking engine the same booking fees that the CRS charges for standard travel agent transactions.

Direct consumer sales through electronic media are nevertheless even more likely to create problems for participating carriers than travel agent sales. For example:

- Individual Internet users are, in Qantas' experience, more likely to engage in non-productive transactions such as churning, i.e., repeatedly making and canceling reservations. Yet Qantas has virtually no means of controlling the booking practices of individual consumers. Whatever the merits of the CRSs' argument that participating carriers are best situated to control the booking practices of "their" travel agents, that argument cannot possibly apply to the millions of individual Internet users.

- The BIDT tapes provided by the CRSs generally fail to include data regarding Internet transactions that are comparable to the data required by 14 C.F.R. § 255.6(d) for travel agent CRS transactions. This makes it virtually impossible to verify the accuracy of the former transactions.

- In Qantas' experience, Internet web sites often fail to display all of the relevant terms and conditions pertaining to Qantas' flights, including essential information regarding code share flights. At a minimum, the failure to display relevant code share information (regardless of the medium) appears to violate 14 C.F.R. § 399.88, which deems the absence of such notice to be unfair and deceptive under Section 411 of the Federal Aviation Act, as amended (the "Act"), currently codified at 49 U.S.C. § 41712.

- CRS-owned and third party web sites also raise the prospect that CRSs and/or the third parties will attempt to bias their Internet displays in ways which would be forbidden in connection with conventional CRS displays for travel agents.

As at least a partial remedy to the additional problems and inequities associated with Internet and Intranet sales, Qantas recommends that the following proposals be incorporated in the new CRS Rules:

First, Qantas proposes that the scope of the CRS Rules should be clarified and/or expanded to encompass CRS-owned and third party web sites offering multi-carrier displays. The application of the current CRS Rules is set forth in Rule 14 C.F.R. § 255.2. That section provides, in part, that the current rules apply to air carriers that directly or indirectly "own, control, operate, or market computerized reservations systems for travel agents in the United States . . . ." Thus, to the extent that airline-affiliated CRSs use travel agencies to process and issue tickets from Internet or Intranet transactions, the current rules arguably apply to CRS-owned web sites now.[9] An argument can be made that the current CRS Rules also apply to at least some aspects of Internet transactions involving third party web sites. As noted above, nearly all such sites use airline-affiliated CRSs as booking engines. In some cases (e.g., Microsoft's Expedia), moreover, the third party provider is actually a travel agent. In other cases (e.g., ITN), the third party is not itself a travel agent but it directs the reservation to travel agencies for ticket issuance. While the ultimate users may be consumers, it could be argued that the airline-affiliated CRSs in these cases are nevertheless marketing their CRSs for travel agent use within the scope of 14 C.F.R. § 255.2, since travel agent involvement is a necessary part of the complete transaction.

Whether these untested interpretations would be upheld by the Department or the courts, however, is at best an open question. In the case of third party web sites, moreover, the current rules do not appear to apply directly to third party providers themselves. In the recent Preference MAAnager decision, for example, the Administrative Law Judge held that travel agents could use certain CRS-supplied software to modify a CRS's display however they want. See Order Denying Motions of AEP and Northwest Airlines, Inc., U.S. DOT Office of Hearings, Docket No. OST 95-430 (Enforcement Proceeding), Mar. 17, 1997.

It is quite clear, however, the DOT has the statutory authority under Section 411 of the Act, 49 U.S.C. § 41712, to clarify and/or expand the CRS Rules to cover both CRS-owned web

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[9]Sabre, for example, apparently owns its own fulfillment house which, in reality and/or practice, is a travel agency that issues tickets sold through Travelocity and other Sabre Internet and Intranet products. These CRS products are arguably "for [a] travel agent[ ]. . ." within the meaning of 14 C.F.R. §255.2 since Sabre's own travel agency is a necessary part of the electronic transaction.

sites and third party web sites. That section grants the Department the authority to prevent unfair practices and methods of competition by air carriers (including their CRS affiliates) and by "ticket agents" in the sale of air transportation. Id. DOT has already identified certain practices and methods of competition as unfair within the meaning of this statute, and barred them by rule in the context of traditional CRS travel agent sales. There is simply no reason not to ensure that the identical practices and methods are barred when engaged in by airline-affiliated CRSs in the Internet and Intranet context and by third parties who themselves are travel agents or whose operations utilize travel agents as an integral part of processing Internet or Intranet transactions.[10]

Second, Qantas recommends that the new CRS Rules incorporate the proposal of Delta Air Lines, Inc. ("Delta") in the recent parity clause rulemaking, see 62 Federal Register 47606, 47610 (Sept. 10, 1997), the effect that participating carriers should have the option of deciding for themselves whether or not to participate in a CRS's direct or indirect Internet or Intranet offerings without prejudice to their ability to participate in the CRS services offered to travel

[10]The issue is not, as some commenters may claim, whether or not the Internet should be regulated. The Internet is "regulated" now in the sense that unlawful or anticompetitive activities implemented over the Internet are not exempt from government challenge simply because they occur in that medium. The Federal Trade Commission, for example, can and has enjoined certain unfair and deceptive practices on the Internet pursuant to its authority under Section 5 of the F.T.C. Act, 15 U.S.C. §45, which applies to transactions other than the sale of air transportation but is otherwise identical to Section 411 of the FAA. The question is not whether the Internet should be regulated, but whether the F.T.C. or DOT should enforce the statutory prohibition on unfair practices and methods of competition in this context. Qantas submits that DOT is the proper authority under the clear language of Section 411 and because of DOT's broad knowledge and expertise in connection with the sale of air transportation generally.

agency subscribers.[11] There is no legitimate justification for tying Internet and Intranet CRS services to the "traditional" CRS services offered to travel agencies, particularly in light of the unique problems created by the former. In all likelihood, most carriers would continue to participate in CRSs' Internet and Intranet services (particularly if the new CRS Rules clearly apply to those services), but participation should be a matter of choice by the individual carrier, not by the CRS.

b. Participating Carrier-Owned Web Sites

Like most carriers, Qantas now offers its own web site on the Internet. At this point, the Qantas site offers, among other information, details of its flights and fares, but not ticket purchase functionality. Qantas is moving toward the development of such functionality, however, and intends to market it as a direct link to travel agencies as well as individual users.[12] Qantas is concerned, however, that its efforts to persuade travel agencies to use the Qantas web site will be frustrated by the continued use of productivity pricing credits, which discourage travel agent use of alternative links to participating carriers, and by the exception in the third party hardware/software/database rule for leased equipment, which could prevent many travel agents from even accessing Qantas' site. Thus, the recommendations proposed by Qantas in Section III-B-1 and III-B-2 above -- to prohibit productivity pricing provisions in Subscriber

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[11]Indeed, such a rule should encompass all new technologies which may provide direct consumer access (e.g., interactive television), and give carriers the option of participating or not participating in each medium.

[12]This site (like most other carrier-owned sites) will not be a CRS within the meaning of the current CRS Rules, however, as it will contain information only about Qantas' own flights, including code-share flights. See 14 C.F.R. § 255.3.

Contracts, and to extend the third party hardware/software/database rule to leased equipment -- take on added significance in the context of the Internet[13] (and other electronic media).

IV. ISSUES RAISED IN AMERICA WEST'S PETITION

The Petition for Rulemaking filed by America West Airlines, Inc. ("America West") on October 14, 1997 proposes two basic changes in the current CRS Rules: (1) that the CRS transactions for which booking fees may be charged to participating carriers should be limited by rule to bookings that result in actual passenger travel; and (2) that participating carriers should have the option of whether or not to permit passive bookings on their flights. DOT invited commenters to address the issues raised by America West's petition in their comments in the general CRS Rulemaking. 62 Federal Register 60195-96 (Nov. 7, 1997).

A. Proposed Limitation on Chargeable Transactions

Qantas strongly endorses the concept of limiting, by DOT rule, the types of transactions for which booking fees may be charged. The America West proposal, if adopted, would help reduce the substantial number of non-productive transactions that yield no benefit to participating carriers but for which the participating carriers are expected to pay ever-escalating fees. Given the dramatic fee increases in recent years,[14] participating carriers simply cannot afford to pay

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[13] Qantas is also concerned that third party control of Internet access (by, e.g. Microsoft) could make it more difficult for travel agent, individual, and corporate users to readily locate and easily use Qantas' own site, which will compete to some extent with third party sites (e.g., Expedia). We ask that DOT carefully monitor the growth and patterns of third party booking services and not hesitate to assert its statutory jurisdiction (as discussed above) to prohibit unfair practices and methods of competition in the sale of air transportation where necessary to keep the Internet freely and equally accessible to all.

[14] As noted above, Sabre has announced that it plans to increase Qantas' booking fees in 1998 by 6 to 8%. Sabre 1998 Pricing Announcement.

exorbitant fees for transactions that provide them no value whatever. The type of limitation proposed by America West helps to ensure that participating carriers will receive value for their CRS payments. Admittedly, this proposal may not substantially alter the noncompetitive nature of the CRS/participating carrier market, nor would it restrict the CRS's ability to escalate prices for chargeable transactions in order to offset their inability to charge for others. Unless and until the market structure becomes truly competitive, however, some limit on chargeable transactions is necessary because participating carriers otherwise lack the market leverage to control their growing CRS expenditures.

While Qantas strongly endorses the concept of limiting the types of transactions for which fees may be charged, it believes that tying the fees to actual travel, as America West proposes, may prove unwieldy. It would be impossible to determine at the time a transaction occurs whether it is ultimately chargeable or not; months could pass before it is known whether the passenger actually travelled. The lag time between a transaction and a charge could easily lead to accounting and auditing difficulties on both sides. Qantas believes it would be less cumbersome to tie the charges to the issuance of tickets on the participating carriers' flights. In other words, CRSs could impose a charge for only one type of transaction, the issuance of a ticket. This modification of America West's proposal would preserve the concept that participating carriers should receive value in return for booking fees, but it would not unduly complicate the accounting or auditing process, as America West's proposal has the potential to do.

B. Proposed Modification on the Discretionary Acceptance of Passive Bookings

Qantas also endorses the proposal that participating carriers should have the option of advising CRSs whether or not they will accept passive bookings and, if not, of instructing the CRSs to prevent travel agents from using a chargeable passive booking functionality. Like the limitation on chargeable transactions discussed above, this proposal is unlikely to fundamentally alter the noncompetitive structure of the CRS/participating carrier market, but it is the most effective and equitable means of avoiding the misuse and abuse associated with passive bookings in the absence of a competitive market structure.

As noted above, passive bookings (particularly by non-IATA agents) represent the largest single category of contested charges for Qantas. Qantas is engaged in an on-going effort to educate travel agents as to the types of transactions which it deems appropriate and those it deems inappropriate, including the use of billable passive codes. Like many other carriers, Qantas is also seriously considering the issuance of debit memos for passive bookings made in violation of Qantas' guidelines. These efforts, however, are expensive, difficult to implement and to enforce, and cannot effectively reach the non-IATA agencies where passive abuse is highest but with whom Qantas has no formal legal or business relationship. By contrast, it is Qantas' understanding that it is a relatively simple matter for CRSs to configure their systems so that passive bookings on carriers that elected not to accept passives would be blocked at the source.

Indeed, Qantas suggests that participating carriers should have the ability to establish the parameters of other transactions they will or will not accept as well, such as duplicative and speculative bookings as defined by the carrier. Barring technical impediments, there is no reason why participating carriers like Qantas should not be able to determine for themselves what types of bookings they will and will not accept, and to require the CRSs to honor these decisions. This approach avoids the need for DOT micromanagement by "unbundling" the services offered to participating carriers. Participating carriers would pay for and receive only those services which they determine to have value for them.

V. ADDITIONAL RECOMMENDATIONS

A. Eliminate Charges for BIDT

CRSs are among the only sellers in any industry that require their customers (participating carriers) to purchase their own monthly accountings rather than providing detailed invoices without charge as a matter of routine. Indeed, the fact that participating carriers must pay any charge to CRSs in order to obtain the BIDT necessary to audit, review, and verify the accuracy of CRS invoices is a vivid illustration of each CRS's market power over its participants. While the charge is not substantial in comparison to total monthly booking fees, the fact that it is now being absorbed by participating carriers rather than the CRSs is highly inequitable. Qantas strongly recommends that DOT adopt a rule prohibiting CRSs from charging participating carriers for the provision of BIDT to enable them to audit their bills.

B. Dispute Resolution Mechanisms

Adoption of the proposals discussed in these comments would clearly reduce the pervasive and extensive disputes between CRSs and participating carriers over CRS billing issues. Regardless of whether these proposals are adopted or not, however, a need will undoubtedly remain for more effective dispute resolution mechanisms. As discussed above, Qantas' attempts to resolve disputed booking fees with each CRS on a bilateral basis have met with relatively little success. Attempts to reclaim disputed amounts through airline clearinghouse procedures have not been effective because CRSs have simply reversed the disputed amounts and billed Qantas once again. Recourse to the courts is also impractical for Qantas, for the PCA's, drafted by CRSs, provide few if any contractual protections for participating carriers. In order to bring an action under certain PCAs, moreover, it would be necessary for Qantas to adjudicate half-way around the world from its Australian headquarters. Ultimately, a CRS's threat to expel a participating carrier from its system is sufficiently coercive to compel most participating carriers to settle their claims on the CRS's terms.

In order to facilitate the resolution of disputed billings on more equitable terms, Qantas proposes that DOT adopt the following requirements:

1. Participating Carrier Claims Should be Processed and Resolved Within a Reasonable and Fixed Period of Time

At present, CRSs have little incentive to resolve or even process claims for credits or refunds by participating carriers, for the CRSs are typically in possession of the fees paid for disputed charges. Qantas has experienced lengthy and unjustified delays -- up to one year or more -- in each CRS's consideration of its claims. Qantas therefore proposes that DOT adopt a rule requiring CRSs to consider and resolve claims by participating carriers within a reasonable and fixed period of time. Subject to further comment, we believe that a three-month period following the submission of a claim should be sufficient.

2. Unresolved Disputes Should be Arbitrated

If a CRS and participating carrier cannot resolve their dispute within a reasonable and fixed period of time (e.g., three months), they should also be required by rule to submit the dispute to arbitration. The Department itself need not be the arbitral authority; it could require arbitration by an independent arbitor selected by the parties, the Department, and/or a recognized arbitration organization such as the International Chamber of Commerce.

3. DOT Should be Notified Well Before Any Participating Carrier is Terminated for Nonpayment of CRS Booking Fees

Qantas also proposes that no CRS should be permitted to terminate a participating carrier due to nonpayment or partial payment of disputed charges for a period of at least four weeks after it has notified DOT (and the carrier) of its intent to terminate the carrier. This prohibition would provide some breathing space for the participating carrier and enable the parties, with DOT's assistance, to explore alternative courses of action. A similar provision is contained it the new parity clause rule, which provides that CRSs notify DOT at least two weeks prior to a scheduled termination for an alleged violation of a parity clause. 14 C.F.R. § 255.6(e). Such notice is no less justified in the context of billing disputes.

VI. CONCLUSION

For the reasons set forth above, Qantas respectfully submits that the Department should readopt the CRS Rules with the modifications discussed herein.

Respectfully submitted,

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